IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 301 of 2003
With
CROSS OBJECTION No. 107 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE M.S.SHAH
HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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NATIONAL INSURANCE CO. - Appellant(s)
Versus
RAMILABEN CHINUBHAI PARMAR (DARJI) & 5 - Defendant(s)

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Appearance :
MR DAKSHESH MEHTA for Appellant(s) : 1,
MR BHARAT JANI for Defendant(s) : 1 - 4.
NOTICE SERVED for Defendant(s) : 5 - 6.

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CORAM : HONOURABLE MR.JUSTICE M.S.SHAH

and

HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 21/03/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE AKIL KURESHI)

This appeal has been filed by the National Insurance Company Limited challenging the judgment and award dated 30th September 2002 passed by the Motor Accident Claims Tribunal (Aux.) Ahmedabad in MACP No.204 of 2001.

2. On 28th February 2001, one Chinubhai Jivanlal Parmar was travelling on his motorcycle on Sarkhej – Gandhinagar Highway. The motorcycle was hit by a tanker coming from the opposite direction. The accident caused fatal injuries to Chinubhai Jivanlal Parmar. His widow, one son and aged parents, therefore, filed above-mentioned claim petition seeking compensation of Rs.40 lacs from the driver, owner and insurer of the tanker in question.

3. Before the Claims Tribunal, the claimants led evidence to establish that the tanker was being driven on the wrong side of the highway which had four lanes and a road divider in between. The Tribunal, therefore, came to the conclusion that accident occurred on account of sole negligence of the tanker driver.

4. With respect to question of quantum of

compensation, the claimants averred before the Claims Tribunal that the deceased was employed as an Operator in IFFCO and on the date of the accident, he was drawing monthly salary of approximately Rs.15,000/-. Age of the deceased was about 46 years. Age of retirement in the employer organization being 58, he would have retired in the year 2012. The case of the claimants before the Tribunal was that in addition to receiving the above-mentioned salary, the deceased also received several other perquisites such as LTC, overtime, incentive allowance, etc. The claimants also averred before the Tribunal that the deceased was likely to receive promotion in future and that the pay scales were also likely to revise as was done periodically in the past.

In addition to oral evidence in the form of deposition of witness – Mukesh Chinubhai Parmar (son of the deceased) at Exh.26, witness – Sanjay Rajendrabhai Patel (Exh.39) and witness Bachubhai Venidas Patel (Exh.41), the claimants produced documentary evidence in the form of Panchnama of the scene of accident. The claimants also produced a certificate at Exh.43 issued by the employer indicating the pay scale in which the deceased was placed on the date of the accident and his future prospects. The

claimants also produced at Exhs.43 and 44, the pay slips issued by the employer indicating the salary and other allowances paid to the deceased.

5. The Tribunal on the basis of evidence led by the claimants came to the conclusion that the deceased was receiving salary of Rs.15,000/- per month on the date of the accident. In addition thereto, the Tribunal also quantified other allowances at Rs.5,000/- per month and held that the deceased was receiving monetary benefits to the tune of Rs.20,000/- per month on the date of the accident. The Tribunal believed that income of the deceased would have increased in future and accepted prospective income at Rs.25,000/- for considering the dependency benefit of the claimants. Out of the said income, the Tribunal set apart of Rs.10,000/- per month towards personal expenditure of the deceased and the income-tax that he might have had to pay. Thus, dependency benefit for the claimants was worked out at Rs.15,000/- per month or Rs.1,80,000/- per year. The Tribunal adopted multiplier of 12 and worked out dependency benefit for the claimants at Rs.21,60,000/-. To this sum, the Tribunal add a further sum of Rs.50,000/- under the head of “conventional amount”. In all, the Tribunal awarded compensation of Rs.22,10,000/- to the claimants to be paid with interest at the rate of

9% per annum from the date of claim petition till realisation.

6. The appellant – insurance Company as insurer of the tanker involved in the accident has, therefore, preferred this appeal challenging the conclusion of the Tribunal both on the question of negligence as well as quantum of compensation awarded.

7. Learned advocate Shri Dakshesh Mehta appearing for the appellant – insurance Company vehemently submitted that the Tribunal erred in holding the tanker driver solely negligent for causing the accident. He submitted that in the Panchnama of the scene of accident, it is stated that half portion of the highway was closed for repairing work. It is submitted that the tanker driver therefore had no choice but to drive his vehicle on the other half of the road, which was open for traffic from both sides. He submitted that the deceased who himself was driving the motorcycle ought to have taken sufficient care under the circumstances and it was only on account of motorcyclist trying to overtake another vehicle that the accident occurred.

8. With respect to question of quantum of compensation, he submitted that the Tribunal

gravely erred in believing the monthly income of the deceased at Rs.15,000/- and adding another sum of Rs.5,000/- without there being any evidence or basis for the same. He submitted that the Tribunal accepted the monthly prospective income of the deceased at Rs.25,000/- without any evidence. He further submitted that the Tribunal ought to have taken into consideration the fact that there was various deductions in the pay of the deceased such as income-tax, LIC payments, Provident Fund contribution, etc. all would work to reduce the income of the deceased. In this regard, reliance was placed on the decision of the Apex Court in the case of Asha V/s. United India Insurance Co. Ltd. reported in 2004 ACJ Page-448.

With respect to choice of multiplier adopted by the Tribunal, learned advocate submitted that the deceased was admittedly aged more than 46 years on the date of the accident. Superannuation age in IFFCO was 58. The deceased, therefore, had less than 12 years of service left on the date of the accident. The Tribunal, therefore, could not have adopted the multiplier of 12 and compensated the family of the deceased for the entire remaining span of his service, considering future income of the deceased at Rs.25,000/- per month.

In this regard, reliance was placed on the decision of the Apex Court in the case of General Manager, Kerala State Road Transport Corporation V/s. Susamma Thomas reported in 1994 ACJ Page-1 and in the case of Tamil Nadu State Transport Corporation Ltd. V/s. S. Rajapriya reported in 2005 ACJ Page-1441. He pointed out that in the case of S. Rajapriya (supra), the Apex Court adopted multiplier of 12 for the deceased, who was aged 38 years on the date of the accident.

9. On the other hand, learned advocate Shri Bharat Jani with Ms. Mohini Bhavsar appearing for the original claimants opposing the appeal submitted that the Claims Tribunal has passed award which cannot be considered as excessive in fact if at all there is some scope for increasing the compensation.

It was contended that the deceased was already receiving monthly salary of Rs.15,000/- on the date of the accident. In addition thereto, he was also receiving certain allowances. It was contended that there was evidence on record to establish that the pay scale of the post which the deceased occupied, would have been revised in due course of time.

The deceased was also due for promotion and in that case, his pay would also have increased substantially. It was contended that the Tribunal committed no error either in accepting the income of the deceased or in the choice of the multiplier.

It was pointed out that in the case of Rukshamaniben V/s. Masaraji Amaraji Thakore reported in 1982(1) GLR Page-525, this Court adopted multiplier of 8 for the deceased aged 60 years.

It was also pointed out that in the case of Gujarat State Road Transport Corporation V/s. Suryakantaben D. Acharya reported in 2001(2) GLR Page-1777, this Court had adopted multiplier of 6 for a person who was aged 60 years. It may be noted that in the said case, however, the deceased concerned was retired Judicial Officer and that it was therefore possible for him to gainfully employ himself even after the date of retirement.

Reliance was also placed on the decision of the Apex Court in the case of Chellammal V/s. Kailasam reported in (2005)11 SCC Page-387, wherein the Apex Court referring to the multiplier provided in the Second Schedule to the

Act increased the multiplier from 12 as adopted by the High Court to 15 in case of death of the person aged 41 years. It may, however, be noted that in the said case, annual loss of dependency was taken at Rs.39,300/-.

10. Having heard the learned advocates appearing for the parties, first adverting to the question of negligence of the tanker driver in causing the accident, we find that the claimants had examined eye-witness – Sanjay Rajendrabhai Patel at Exh.39. This witness had deposed before the Tribunal that on the date of the accident, he was travelling from Jamiyatpura to Gandhinagar. At that time, the deceased was travelling on his motorcycle in front of the witness. The witness further stated that the deceased was driving his motorcycle on the left hand side of the road, at which time, a tanker bearing registration No. GJ-18 / T-586 came from Gandhinagar side with full speed and on the wrong side and had knocked down the motorcyclist in front of him. He stated that the motorcycle had dragged to a distance of about 20 to 25 feet. He further stated that Adalaj – Gandhinagar Highway has a road divider and the other side of the divider is meant for the traffic coming from Gandhinagar going towards Sarkhej. He also stated that the other side of the road was open for traffic and thus, the

tanker driver had driven his tanker on the wrong side of the road. He stated that the tanker driver had not flashed light while coming from the opposite direction on the wrong side.

In cross-examination, the witness denied the suggestion that the other half of the road was not available for traffic due to repair work.

The claimants also examined Panch witness – Bachubhai Venidas Patel at Exh.41, who had signed the Panchnama of the scene of the accident. This witness deposed before the Tribunal that his signature was taken on the Panchnama while he had visited the hospital at Gandhinagar, where the deceased was brought. He stated that the Panchnama was not prepared in his presence.

11. On the basis of above-referred evidence, the Tribunal was of the opinion that the accident occurred on account of sole negligence attributable to the driver of the tanker.

12. Before the Tribunal, though a suggestion was made that one part of the road between Sarkhej and Gandhinagar was not available for traffic on account of repair work in progress, no evidence to establish this fact was led by the

original opponents. Though reliance was sought to be placed on the narration in the Panchnama of the scene of the accident, where some such suggestion was made, such contents were not proved. Primarily, the Panch witness – Bachubhai Venidas Patel had deposed before the Tribunal that the Panchnama was not prepared in his presence. Additionally, eye-witness – Sanjay Rajendrabhai Patel (Exh.39) had clearly stated before the Tribunal that both the sides of the road were open for traffic. The original opponents led no evidence to establish that a portion of the road was not available for vehicular traffic on account of repair work. It is undisputed that the tanker was being driven on the wrong side of the road. In that view of the matter, unescapable conclusion would be that despite the highway having four lanes and a road divider in between, the tanker driver had for unknown reason travelled on the wrong side of the road and caused accident by knocking down the motorcyclist, who was travelling on the left hand side on his correct side of the road. Significantly, no attempt was made by the appellant to examine the tanker driver to throw light on the exact nature of accident. Considering all these aspects of the matter, we find that the Tribunal committed no error in holding the drive of the tanker solely negligent

in causing the accident.

13. Coming to the question of quantum of compensation, there is no dispute that the deceased was employed as an Operator in IFFCO. From the certificate Exh.42 issued by the employer, it could be seen that the deceased joined his service on 01st January 1977. On the date of the accident he was placed in the scale of Rs.6400 – 130 – 8870. The certificate also indicates that the deceased would have retired on 30th November 2012. From the said certificate, it can also be seen that since 1977, there were as many as five pay revisions upto 1996 and one more pay revision was expected some time in 2006 or thereabouts. The certificate also indicates that the deceased was likely to get promotion, had he not unfortunately expired.

From the pay slip at Exh.43, it is apparent that on the date of the accident, the deceased was placed in the basic pay of Rs.7960/-. With dearness allowance and other allowances, his gross salary was Rs.14,943/-. In addition thereto, he was also receiving other allowances such as incentive allowance, LTC, employers' contribution towards Provident Fund, etc. Considering these aspects of the matter, it would appear that to the gross basic salary of

Rs.14,943/- of the deceased on the date of the accident, there were certain substantial additions in the form of LIC benefit, incentive allowance and employers' contribution to Provident Fund at the rate of 12% of the basic salary. Thus, even accounting for income-tax and other deductible taxes and charges which would have the effect of reducing take home salary of the deceased, it would not be unreasonable to believe that the deceased would have been earning net salary of Rs.14,000/- on the date of the accident.

14. As noted earlier, there was evidence on record to establish that the deceased was placed in a time scale of pay and his basic salary would be revised upwardly with passage of time. Additionally, with passage of time dearness allowance rate would also be revised. Further, the deceased was also entitled to consideration for promotion. Considering all these aspects of the matter, we would have to estimate the prospective monthly income of the deceased. In addition to the above-mentioned factors, we may also recall that the pay scales in the employer organization had undergone five revisions since 1977, when the deceased joined the service. Noting that the deceased would have superannuated in the year 2012, at least one more pay revision

was eminent.

Considering all these aspects of the matter, we find that it would not be unreasonable to accept 50% increase in the monthly income of the deceased for considering his future prospective income. Thus, in our assessment, take home salary of the deceased after considering the income-tax and other permissible deductions, can be taken at Rs.21,000/- per month. One-third thereof needs to be reduced for the personal expenditure of the deceased himself leaving net monthly dependency benefit of Rs.14,000/- for the family.

15. Coming to the question of choice of multiplier, as noted earlier, the deceased had already crossed age of 46 years. Age of superannuation in the employer organization is 58 years. Adopting multiplier of 12 would tantamount to giving the entire benefit of life span and something more to the deceased after projecting his future prospective income at a rate substantially higher than the current income of the deceased from the date of the accident. Considering this aspect of the matter and considering recent trend of the Apex Court, as pointed out by the learned advocate for the appellant in case of S. Rajapriya (supra) and

other recent decisions, multiplier of 12 adopted by the Tribunal was certainly not justified. It is true as pointed out by the learned advocate for the opponent that Second Schedule to the Act provides for a multiplier of 13 for the deceased in the age group of 45 to 50 years, however, the Schedule is applicable to cases where the yearly income of the victim does not exceed Rs.40,000/-. In the present case, we have already believed the prospective income of the deceased at Rs.21,000/- per monthi.e. Rs.2,52,000/- per annum. Choice of multiplier depends on several factors. In the facts and circumstances of the case, considering the age of the deceased, the multiplicand that we have adopted, the fact that the deceased would have in any case superannuated in less than 12 years after the accident, we find that appropriately multiplier of 8 would be justified.

Reference at this stage may be made to the decision of the Apex Court in the case of Chellammal V/s. Kailasam (supra), wherein the Apex Court was pleased to rely upon the multiplier provided in the Second Schedule to the Act for increasing the multiplier. As noted earlier, however, in the said case the annual loss of dependency was assessed at Rs.39,300/-. In a decision dated 14th March, 2007 passed by this Court in First Appeal No.3546 of 2001 in

case of Champaben w/o. Chandrasinh Dhulabhai Rathod and ors. V/s. Anopsinh Somabhai Baria and ors., with respect to the question of multiplier, Division Bench of this Court observed that in case of Jyoti Kaul and others v. State of M.P. and another, (2002)6 Supreme Court Cases 306 and in case of Union of India Insurance Co. Ltd and others v. Patricia Jean Mahajan and others, (2002)6 Supreme Court Cases 281, the Apex Court leaned in favour of adopting multiplier as indicated in the Second Schedule, barring exceptional circumstances such as a very huge amount of multiplicand. It was observed that in the later decisions, the trend has been to adopt a lower multiplier. The Bench had also noted the decision of the Apex Court in Chellammal V/s. Kailasam (supra). It was also observed that all cases where the Apex Court had adopted multiplier from the Second Schedule were the cases where the income of the victim was less than Rs.40,000/- per annum or slightly higher. It was further observed that the amount of income of the deceased is not to be the sole criteria for deciding whether the multiplier should be adopted on the basis of Second Schedule. It was further observed that where only the parents of the deceased are claimants, age of the parents would also be relevant for determining the multiplier. It was observed that the choice of appropriate

multiplier would depend on facts and circumstances of each case, having regard mainly to the amount of multiplicand and the age of the deceased and the claimants. We may also notice that in a recent decision in the case of National India Assurance Co. Ltd. V/s. Smt. Kalpana and others reported in 2007 AIR SCW 1316, the Apex Court applied the multiplier of 13 in case of death of a taxi driver aged 33 years on the date of accident.

16. Under the circumstances, we find that computation of compensation would be worked out as follows :-

Dependency benefit would be Rs.14,000/- per month i.e. Rs.1,68,000/- per annum. Adopting multiplier of 8, total dependency benefit would come to Rs.13,44,000/- (i.e. Rs.1,68,000/- X 8). To this figure, we may add a sum of Rs.25,000/- for loss to the estate and Rs.15,000/- for loss of consortium to the widow of the deceased and Rs.5,000/- for funeral expenses. Thus, total compensation would be worked out at Rs.13,89,000/- which can be rounded upto Rs.13,90,000/-. We order accordingly. The judgment and award under challenge accordingly stands modified.

It was contended on behalf of the appellant – insurance Company that the Tribunal ought not to have awarded interest at the rate of 9% per annum and appropriately interest should be pegged back at 7.5% per annum. In view of the recent decision of the Apex Court in case of Tejinder Singh Gujral V/s. Inderjit Singh reported in (2007)1 SCC Page-508, we are unable to accept this contention and uphold the direction for payment of 9% interest to the claimants.

17. It is stated by the learned advocate for the appellant – insurance Company that the entire award amount has been deposited before the Claims Tribunal. The appellant shall therefore be entitled to receive back additional amount deposited before the Claims Tribunal with proportionate costs and interest.

18. It is pointed out by the learned advocate appearing for the parties that the insurance Company had deposited the entire award amount in March 2003. 25% thereof was permitted to be withdrawn by the claimants. Remaining 75% amount has been ordered to be deposited in the fixed deposits for a period of five years. If such fixed deposit is disturbed at this stage, it may cause substantial loss of interest to the

claimants. In that view of the matter, the refund of excess amount deposited by the insurance Company as per the modified award will be paid to the insurance Company only upon maturity of the fixed deposit in question. However, it is further directed that the claimants shall receive periodic interest on such fixed deposit only on such amount as they are entitled to retain as per the directions contained in this judgment. For the remaining amount which the insurance Company would be entitled to reclaim, periodic interest henceforth shall be paid to the insurance Company and not to the claimants.

19. With these directions, the appeal stands allowed partially. In view of allowing of appeal as mentioned above, Cross Objections No.107 of 2006 stand dismissed.

[M.S.SHAH,J.]

[AKIL KURESHI,J.]

mrpandya*